

Application No.: 10/606,100

Response to Office Action dated: March 13, 2008

**Remarks/Arguments**

Claims 1, 4, 5, 8, 13, 15, 16, 19, and 28-39 are in the application. Claims 1, 28, 36 and 37 are in independent form.

**Examiner Interview**

Applicant thanks the Examiner for courtesies rendered to his representative in the June 10, 2008 personal interview. Participating in the interview were Primary Examiner John Hotaling, Examiner Adetokunbo O. Torimiro and applicant's representative Michael O. Scheinberg. Claim 28 was discussed in relation to U.S. Pat. Pub. No. 2004/0029627 of Hannan et al. ("Hannan") and U.S. Pat. No. 4,962,950 to Champion ("Champion"). Applicant's representative argued that neither reference teaches a non-skills based-lottery, and that a skill-based wagering system in which some players may chose random picks is operated in a fundamentally different manner than a non-skill-based lottery in which each participant has a equal probability of winning. Applicants thank the Examiners for suggested amendments that are intended to clarify the claims and expedite prosecution.

**Claim Rejections – 35 USC § 103**

Claims 1, 4, 5, 8, 13, 15, 16, 19, 28, 29, and 31-39 stand rejected under 35 USC 103(a) as being unpatentable over Hannan in view of Champion.

Claim 28 is amended to explicitly include a step of "after the competition is conducted determining the outcome of the competition" and to explicitly claim the numbers are associated with the participates "after accepting all the multiple wagers from the wagerers," thereby clarifying a difference between claim 28 and the prior art.

In the invention of claim 28, the lottery is truly random so the calculation of odds and payouts is a matter of pure mathematics. Hannan, on the other hand, is a "Skill Based Lottery System." The "skill" factor means that the odds and promised payouts must be calculated using judgment about the probability of each horse winning the event or placing in the top spots. The operation and payout calculations of a pure lottery and a skills-based wagering system are fundamentally different. Adding a "quick pick" to the skilled-based betting system does not change the fundamental operating assumption that the horses do not have an equal probability of winning and that the odds and payoffs must judge the values of the horses.

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Even in the "quick pick" aspect of Hannan et al., the user is assigned numbers that correlate to specific horses (para. [0048]), and so the user knows which horses he is wagering on when the wager is made. When wagerer of amended claim 28 picks numbers, the numbers have not yet been correlated to specific horses, and so "the wagerers do not know which participants are associated with the picked numbers when they are picked."

In Champion, a wager coupon is provided with an admission ticket. The wager coupon does not include a specific wager; it includes a limitation that defines a class of wagers. When the bettor scratches off the covering, he knows what the limitations of the wager are before he places a bet. If the limitations are general, such as a race number or a type of bet (e.g., exacta), the bettor then uses skill to decide on the actual wager. For example, if the wager limitation is for a type of bet, the bettor uses his judgment to pick the horses. Even in embodiments in which a horse or jockey is specified, the bettor can pick the race, which does not need to be on the same day as the ticket purchase. Col. 5, lines 35-38. Thus, Champion does not teach a system in which "the wagerers do not know which participants are associated with the picked numbers when they are picked."

Claims 36 and 37 are rewritten into independent form.

Claim 30 stands rejected under 35 USC 103 as being unpatentable over Hannan in view of Champion and further in view of US 2004/0043810, Perlinet al. (Perlinet). Perlinet describes a marketing method that uses a "prediction contest" in which a participant must view an advertisement before predicting the outcome of a sporting or entertainment event. As such, Perlinet teaches a skills-based system. Perlinet also teaches a raffle, which is random but not tied to a sporting event outcome. Thus, Perlinet does not provide the elements missing from the primary references.

Applicant submits that the remaining claims, being dependent from claims that are allowable for reasons stated above, are also allowable. Accordingly, Applicant requests that the objections to these remaining claims also be withdrawn.

#### **Conclusion**

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific objection, issue, or comment does not signify agreement with or concession of the rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or

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other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicant submits that all claims in the application are now in condition for allowance, and Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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